

Counsel listed on next page

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID HALTERMAN,

Plaintiff,

v.

LEGATO SOFTWARE, a Division of EMC
Corporation; EMC CORPORATION, dba
EMC PERIPHERALS, INC., and DOES 1-X,

Defendants.

Case No. C04-2660 JW

**STIPULATION AND ~~PROPOSED~~
ORDER SHORTENING TIME TO
HEAR EMC CORPORATION'S
MOTION TO QUASH PLAINTIFF'S
SUBPOENA TO THIRD-PARTY
PRICEWATERHOUSECOOPERS
CIV. L.R. 6-2(a)**

1 KATHRYN BURKETT DICKSON (State Bar No. 70636)
DICKSON – ROSS LLP
2 1970 Broadway, Suite 1045
Oakland, California 94612
3 Telephone: (510) 268-1999
Facsimile: (510) 268-3627
4

DAVID ANGLE (admitted *Pro Hac Vice*)
5 ANGLE & ANGLE LLC
1920 13th Street, Suite C
6 Boulder, Colorado 80302
Telephone: (303) 443-2200
7 Facsimile: (303) 443-2229

8 **Attorneys for Plaintiff**
David Halterman
9

GARY R. SINISCALCO (State Bar No. 64770)
10 MICHAEL D. WEIL (State Bar No. 209056)
ORRICK, HERRINGTON & SUTCLIFFE LLP
11 The Orrick Building
405 Howard Street
12 San Francisco, California 94105-2669
Telephone: 415-773-5700
13 Facsimile: 415-773-5759

14 LYNNE C. HERMLE (State Bar No. 99779)
ORRICK, HERRINGTON & SUTCLIFFE LLP
15 1000 Marsh Road
Menlo Park, California 94025-1021
16 Telephone: 650-614-7400
Facsimile: 650-614-7401
17

LEANNE FITZGERALD (admitted *Pro Hac Vice*)
18 EMC CORPORATION
2350 West El Camino Real
19 Mountain View, CA 94040

20 **Attorneys for Defendant**
EMC Corporation
21
22
23
24
25
26
27
28

1 PURSUANT TO LOCAL RULE 6-2(a), Plaintiff David Halterman and Defendant
2 EMC Corporation (collectively, “the parties”) stipulate as follows:

3 WHEREAS, on August 12, 2005, plaintiff Halterman served on third-party
4 PricewaterhouseCoopers (“PwC”) a subpoena to produce records relating to PwC’s audits of
5 Legato Systems, Inc. (“Legato”) for the years 2000, 2001 and 2002;

6 WHEREAS, plaintiff’s subpoena, attached hereto as Exhibit A, requests
7 production of records by August 29, 2005;

8 WHEREAS, the parties’ counsel met and conferred regarding the subpoena, but
9 could not come to a resolution;

10 WHEREAS, EMC Corporation filed, or will file, a motion to quash the subpoena
11 on Friday, August 19, 2005;

12 WHEREAS, the Court’s October 26, 2005 Scheduling Order and August 15, 2005
13 order set the discovery cut-off for non-expert discovery on September 14, 2005;

14 WHEREAS, the parties have scheduled other discovery related matters that would
15 interfere with having a hearing on a Tuesday between this date and September 14, 2005;

16 WHEREAS, if the Court denies EMC’s motion and PwC produces the requested
17 information, plaintiff may want to provide this information to his accounting expert(s) to include
18 in a supplemental expert report or mark as an exhibit during the deposition of EMC’s expert;

19 WHEREAS, the parties have scheduled plaintiff’s accounting experts for
20 deposition in Los Angeles on September 13 and 14, 2005;

21 WHEREAS, the parties have scheduled EMC’s expert’s deposition on September
22 21, 2005;

23 WHEREAS, the Court’s October 26, 2004 Scheduling Order also provides, at
24 paragraph 9, that “an expert witness shall be precluded from testifying about any actions or
25 opinions not disclosed prior to the expert’s deposition. This is to ensure that all factual material
26 upon which an expert opinion may be based and all tests and reports are completed prior to the
27 expert deposition.”

28 WHEREAS, EMC will not waive its right, under paragraph 9, to object to

plaintiff's expert relying on any factual material, including the requested PwC documents, after EMC takes the deposition of plaintiff's expert(s);

WHEREAS, the last day to file a motion to exclude expert testimony is October 10, 2005 for a hearing on November 14, 2005, pursuant to the Court's August 15, 2005 order;

WHEREAS, Lynne Hermle, one of EMC's counsel, and Kathy Dickson, one of plaintiff's counsel, are both engaged in the same litigation, unrelated to this case, and have an estimated three week trial set for late September 2005 in the Superior Court for the County of San Mateo;

WHEREAS, EMC wishes to have a hearing set before the date set for production of PwC's documents and plaintiff wants to resolve EMC's motion on an expedited basis given the foregoing;

IT IS HEREBY STIPULATED by and between the parties to this action through their designated counsel as follows:

1. the parties respectfully request that this Court enter an order shortening time for a hearing on EMC's motion to quash plaintiff's August 12, 2005 subpoena served on PwC, as follows:

(a) plaintiff's opposition to EMC's motion to quash shall be filed on or ^{noon on} before August 26, 2005;

(b) EMC's reply shall be filed on or before ^{noon on August 29} ~~August 31~~, 2005; and

(c) EMC's motion to quash shall be heard on ^{August 30,} ~~September 2~~, 2005 at 10:00 a.m. in Department 5.

2. The date for production of the documents requested from PwC pursuant to plaintiff's subpoena shall be extended until seven calendar days after the Court enters an order regarding EMC's motion to quash.

//

//

//

//

3. EMC shall provide PwC a copy of this Order.

Dated: August 19, 2005

Respectfully submitted,

KATHRYN BURKETT DICKSON
DICKSON – ROSS LLP

DAVID ANGLE
ANGLE & ANGLE LLC

By: _____/s/
Kathryn Burkett Dickson
Attorneys for Plaintiff David Halterman

Dated: August 19, 2005

GARY R. SINISCALCO
LYNNE C. HERMLE
MICHAEL D. WEIL
ORRICK, HERRINGTON & SUTCLIFFE LLP

LEANNE FITZGERALD
EMC CORPORATION

By: _____/s/
Michael D. Weil
Attorneys for Defendant EMC Corporation

I hereby attest that I have on file all holograph signatures for any signatures indicated by a
“conformed” signature (/s/) within this efiled document.

By: _____/s/
Michael D. Weil
Attorneys for Defendant EMC Corporation.

IT IS SO ORDERED; *as modified by the court.*

Dated: 8/22/05

/s/ Patricia V. Trumbull
The Honorable Patricia Trumbull
United States Magistrate Judge